

The Odisha Gazette



EXTRAORDINARY PUBLISHED BY AUTHORITY

No. 1308 CUTTACK, SATURDAY, JULY 6, 2013 / ASADHA 15, 1935

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 26th June 2013

No. 5879—IR(ID)-103/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 9th May 2013 in Industrial Dispute Case No. 20 of 2011 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s Balangir District Central Co-operative Bank Ltd., Balangir and its Workman Shri Jayananda Mishra was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 20 OF 2011

Dated the 9th May 2013

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer,
Labour Court,
Sambalpur.

Between :

The Management of . . . First Party—Management
M/s Balangir District Central
Co-operative Bank Ltd., Balangir
represented through :—

1. The President/Secretary,
Balangir District Central Co-operative
Bank Ltd., Balangir.
2. The Branch Manager, Sadar Branch,
Balangir District Central Co-operative
Bank Ltd., Balangir.

And

Its Workman . . . Second Party—Workman
 Shri Jayananda Mishra,
 S/o. Shri Rabi Narayan Mishra,
 At Agalpur, P.O. Loisingha,
 Dist. Balangir.

Appearances :

Smt. J. Pradhan, Legal Assistant	. . . For the First Party—Management
Self	. . . For the Second Party—Workman himself.

AWARD

This award arises out of a reference made by the Government of Odisha, in the Labour & Employment Department, under the power conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the "Act") vide order under Memo. No. 11321(6), dated the 15th December 2011. The dispute involved under the Schedule of reference is as follows :—

"Whether the action of the management of Balangir District Central Co-operatives Bank Ltd., Balangir in terminating the services of daily wage worker Shri Jayananda Mishra by way of refusal of employment with effect from the 22nd May 2007 is legal and/or justified ? If so, to what relief the concerned workman is entitled ?"

2. The case of the second party workman as per his statement of claim is that he was employed by the first party in his establishment as Peon with effect from the 15th October 1997. He was being paid his wages on monthly basis and performed his duties as and when directed and instructed by the first party management. He continuously worked under the management till Dt. 25-5-1997, when his service was illegally terminated. According to the workman, the first party did not observe the procedure under Section 25-F/25-N of the I. D. Act, 1947 and he was not paid one month notice pay or retrenchment compensation. In his statement of claim, the workman has further narrated that the management has retained the service of some junior workman and regularised their services ignoring him though he has no fault. Since no procedure for termination of the second party was observed by the first party, he claims to be reinstated in service and payment of full back wages.

3. The management filed written statement wherein they asserted that the second party was temporarily allowed to work as an outsider in their establishment on daily wage @ Rs. 900 per month from Dt. 15-10-1997 till Dt. 22-5-2007 due to the existing workload. He was not engaged on permanent basis nor any procedure was followed for his engagement. Since Dt. 22-5-2007, no job was assigned to him and therefore he is not entitled to any amount. According to the management, the second party was merely a casual and temporary employee and therefore no procedure was required to be followed for termination of his service. According to the management, the reference of the Government in the present case is ambiguous, bad and unfounded and as such not maintainable.

4. The second party workman filed a rejoinder to the written statement of the management stating therein that the management has arbitrarily and whimsically terminated his service though there is still plenty of work in their establishment. He claims that since he continuously worked

under the first party for long 10 years, he cannot be said to be an outsider to the establishment. He further claims that he was duly appointed under Order No. 3921, dated the 15th October 1997 and the letter of appointment does not contain any condition or terms of employment whatsoever. It is further case of the workman that from the date of his termination from service he is unemployed till date and reiterates his claim of reinstatement of his service and back wages.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication :—

ISSUES

- (i) "Whether the action of the management of Balangir District Central Co-operative Bank Ltd., Balangir in terminating the services of daily wage worker Shri Jayananda Mishra by way of refusal of employment with effect from the 22nd May 2007 is legal and/or justified ?
- (ii) If so, to what relief the concerned workman is entitled ?"

6. In support of his case, the workman examined 3 witnesses including himself as W.W. 1, and two ex-employee of the management as W.W. 2 and W.W. 3. The management on the other hand examined 2 witnesses who are its employees. The second party relied upon two documents such as, a copy of his Order of engagement marked Ext. 1 and a copy of the letter addressed to the Assistant Labour Officer, Balangir regarding disengagement of the second party marked Ext. 2. The management has not filed any document in support of its case.

FINDINGS

7. *Issue No. (i)*—The workman, consistent to his statement of claim, deposed evidence that he continuously worked under the first party since Dt. 15-10-1997 till Dt. 25-5-2007. During course of his evidence a letter No. 3930, dated the 15th October 1997 communicated to the workman by the Secretary, District Central Co-operative Bank Ltd., Balangir (Management) has been marked as Ext. 1. This document reveals that as per the Order of the then Secretary, D.C.C.B. Ltd., Balangir, the second party was allowed to work in the Bank on daily wages @ Rs. 900 per month with effect from the 15th October 1997. The second party was directed to work in the establishment section of the said Bank. There is no dispute that the second party was working as Peon under the first party on monthly wages @ Rs. 900 and he continued to render such service till Dt. 22-5-2007. There is no evidence from the side of the management to the effect that the second party was discontinued from service for any day during the period commencing from Dt. 15-10-1997 till Dt. 25-5-2007. The Section 25-B of the Industrial Disputes Act, declares that "a workman shall be said to be in the continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal....." under sub-section (2) of Section 25-F, a person working for 240 days in a calendar year can be said to be in continuous service. In the present case, considering admission of the management that the second party continuously worked from Dt. 15-10-1997 till Dt. 25-5-2007 the Court is satisfied to hold that the second party was in continuous service under the first party and entitled to all benefits as provided under the Industrial Disputes Act.

8. It is the claim of the workman that the management, all of a sudden, refused his service with effect from the 25th May 2007 without assigning any reason and such action amounts to illegal

termination. The workman raised his grievance before the Assistant Labour Officer, Balangir-cum-Conciliation Officer who in due discharge of his duties, called upon the management for settlement. The report of the Conciliation Officer reveals that the management submitted its views vide their letter No. 8562, dated the 28th December 2010. A copy of the said letter has been marked as Ext. 2. In this letter the management submitted that the second party was engaged temporarily in the Bank as a casual labourer from Dt. 15-10-1997 to Dt. 22-5-2007 due to surplus workload in the Bank. It was further mentioned in the letter that after introduction of computerisation system in the Bank the usual workload of the Bank has been reduced to a great extent and the engagement of the sub-staff has been gradually reduced and as such the second party was not engaged from Dt. 22-5-2007 onwards. Admittedly, the second party was not doing any clerical and account work in the Bank and he was merely a Peon rendering physically service to the management. His initial order of engagement, Dt. 15-10-1997 marked Ext. 1 does not reveal that he was appointed as casual worker. He was allowed to work on a monthly wage of Rs. 900. Therefore, the claim of the management that after introduction of computerisation system the second party was disengaged from service has no basis. The second party was rendering continuous service for about 10 years but no communication was made to him in writing regarding termination of his service. Before disengagement, he was not served with any notice as required under Section 25-F of the I. D. Act, nor any notice pay was tendered to him. Admittedly, there is no allegation of the first party that service of the second party was unsatisfactory or that he committed any act of misconduct. Under the above circumstances, the refusal of service to the second party by the first party amounts to illegal retrenchment. The termination of service of the second party under the above facts and circumstances, must be held to be illegal and unjustified. The issues are accordingly answered in favour of the workman.

9. *Issue No. (ii)*—The second party was in continuous service as a Peon under the first party management for a long period, i.e. from Dt. 15-10-1997 to Dt. 22-5-2007 and it has already been held that he was terminated from service illegally and without following the procedure under the Industrial Disputes Act. Under such circumstances, the second party is entitled to reinstatement in service in the same manner as assigned duties by the date of his termination. The termination of service of the second party being illegal, he is also entitled to back wages. However, the second party waited for about 3 years from the date of his termination and only in the year 2010, he raised his grievance before the Assistant Labour Officer, Balangir and wanted re-employment. Under such circumstances, I feel it will be just and proper to hold that he is entitled to 50% of back wages from the date of his termination from service till re-employment. The issue is accordingly answered in favour of the second party.

10. In view of the determination of the issues in the manner aforesaid, the reference is answered in favour of the second party but without cost. Hence, the following Award.

AWARD

The reference is answered on contest against the first party without cost. The action of the management of Balangir District Central Co-operative Bank Ltd., Balangir in terminating the services of daily wage worker Shri Jayananda Mishra by way of refusal of employment with effect from the 22nd May 2007 is held to be illegal and unjustified. The first party is directed to reinstate the second party in service within one month of publication of the Award in Official Gazette. The first party is

further directed to pay 50% of back wages to the workman from the date of his termination, i.e. from the 22nd May 2007 till the date of reinstatement in service within a period of 3 months of the publication of the Award, failing which the arrear wages shall carry interest @ 6% per annum till the date of full realisation.

Dictated and corrected by me.

SRIKANTA MISHRA

9-5-2013

Presiding Officer

Labour Court, Sambalpur.

SRIKANTA MISHRA

9-5-2013

Presiding Officer

Labour Court, Sambalpur.

By order of the Governor

J. DALANAYAK

Under-Secretary to Government